



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

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Matthew J. Strickler
Secretary of Natural Resources

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Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO TOWN OF ELKTON FOR ELKTON STP VPDES Permit No. VA0026433

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the Town of Elkton, regarding the Elkton Sewage Treatment Plant (STP), for the purpose of incorporating a plan to address flows in excess of 95 percent of the authorized design capacity at the Elkton STP into an enforceable document. This Order supersedes and terminates the Consent Order issued by the Board to Elkton on October 20, 2008, and amended August 5, 2011 and September 3, 2014.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b)/303(d) report" means the report required by Section 305(b) and 303(d) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
 2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
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3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
 4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
 5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
 6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
 7. "DMR" means Discharge Monitoring Report.
 8. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
 9. "Elkton" means the Town of Elkton, a political subdivision of the Commonwealth of Virginia. Elkton is a "person" within the meaning of Va. Code § 62.1-44.3.
 10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
 11. "O&M" means operations and maintenance.
 12. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
 13. "Permit" means VPDES Permit No. VA0026433, which was issued under the State Water Control Law and the Regulation to the Town of Elkton on January 1, 2017 and which expires on December 31, 2021.
 14. "Plant" means the Elkton STP located at 15917 Old Spotswood Trail in Elkton, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the Town of Elkton
 15. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand,
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cellar dirt and industrial, municipal, and agricultural waste discharged into water...
9 VAC 25-31-10.

16. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
17. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
19. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
20. "TMDL" means Total Maximum Daily Load, and is the sum of the individual wasteload allocations for point sources and load allocations for nonpoint sources and natural background.
21. "Va. Code" means the Code of Virginia (1950), as amended.
22. "VAC" means the Virginia Administrative Code.
23. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. Elkton owns and operates the Plant. The Permit allows Elkton to discharge treated sewage and other municipal wastes from the Plant, to the South Fork Shenandoah River, in compliance with the terms and conditions of the Permit.
 2. The South Fork Shenandoah River is located in the Potomac River Basin and is listed in DEQ's 305(b)/303(d) report as impaired for recreational use due to E. coli and Fecal Coliform and is impaired for Aquatic Life. Sources of pollution are listed as Agriculture,
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Non-Point Sources, Wildlife Other than Waterfowl, and Unknown. The recreational use impairment is included in the EPA approved South Fork Shenandoah River bacteria TMDL (Federal TMDL ID # 38140). In addition, this river is impaired for Fish Consumption due to the presence of mercury in sediments. The mercury impairment is included in the South Fork Shenandoah TMDL for Mercury (Federal TMDL ID # 38701).

3. Elkton initially became subject to a Consent Order (Order) that became effective October 20, 2008 as a result of effluent limit violations, unpermitted discharges, and improper operations and maintenance at the Plant. The Order provided a schedule of compliance to correct operational deficiencies within the Plant, to construct certain Plant upgrades involving sludge dewatering and the ultraviolet disinfection system, and to develop a plan to address inflow and infiltration (I&I) problems in its collection system to ensure the Plant is capable of meeting the Permit's effluent limitations and to limit/prevent hydraulic overloading of the Plant during wet weather.
 4. Elkton subsequently became subject to a Consent Order Amendment (Amendment) that became effective August 5, 2011 as a result of continuing effluent limit violations and failure to meet the schedule of compliance contained in the Order to construct upgrades involving sludge dewatering and the ultraviolet disinfection system. The Amendment provided a revised schedule of compliance to construct these Plant upgrades described above, and provided a schedule of compliance to develop a plan and schedule of rehabilitation and replacement/corrective actions involving the Plant's influent screw pumps and clarifiers. In addition, the Amendment provided a schedule of compliance to complete specific I&I reduction projects and to complete I&I investigations in specific subbasins that included flow monitoring, smoke testing, manhole and building plumbing inspections, and television inspections of sewer collection lines.
 5. On September 3, 2014, DEQ approved and incorporated into the Amendment a plan and schedule to upgrade the Plant's clarifiers, relocate the ultraviolet disinfection system, install sludge pumping facilities and associated return sludge and effluent piping, and to complete additional specific I&I reduction projects.
 6. On December 23, 2016, Elkton advised DEQ that despite completion of the I&I reduction investigation and projects outlined in the Order and Amendment, the monthly average influent flow was in excess of 95 percent of the Plant's design capacity for the period of October 2015 through March 2016. Elkton proposed and DEQ agreed to the submittal of a new Preliminary Engineering Report (PER) to identify critical infrastructure necessary to effectively treat and convey wastewater at the Plant for a minimum of a 20 year horizon.
 7. DMRs submitted by Elkton indicate that the monthly average influent flow was in excess of 95 percent of the Plant's design capacity for the periods of March 2015 through July 2015, October 2015 through March 2016, and May 2016 through August 2016.
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8. Part I.F.1 of the Permit requires that a plan of action be submitted to DEQ when the monthly average influent flow to the wastewater treatment plant reaches 95 percent of the authorized design capacity for each month of any three consecutive month period.
9. On February 10, 2017, Elkton submitted a PER that recommended constructing a 1.2 MGD plant to serve Elkton to address high influent flows. The expansion would utilize the Plant upgrades completed since 2008 described above. Substantial completion of the expansion is expected in May 2021.
10. On February 20, 2018, Elkton advised that additional analysis suggests that construction of a 0.8 MGD plant may adequately address high influent flows.
11. DEQ staff and representatives of Elkton have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Elkton, and Elkton agrees to perform the actions described in Appendix A of this Order.

Both the Board and Elkton understand and agree that this Order supersedes and terminates the Consent Order issued by the Board to Elkton on October 20, 2008, and amended August 5, 2011 and September 3, 2014.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Elkton for good cause shown by Elkton, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
 2. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
 3. For purposes of this Order and subsequent actions with respect to this Order only, Elkton admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
 4. Elkton consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
 5. Elkton declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other
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administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Elkton to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Elkton shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Elkton shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Elkton shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
 10. This Order shall become effective upon execution by both the Director or his designee and Elkton.
 11. This Order shall continue in effect until:
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- a. the Director or his designee terminates the Order after Elkton has completed all of the requirements of the Order;
- b. Elkton petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Elkton.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Elkton from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Elkton and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Elkton certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Elkton to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Elkton.
14. By its signature below, Elkton voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 17th day of May, 2018



Amy T. Owens, Regional Director
Department of Environmental Quality

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The Town of Elkton voluntarily agrees to the issuance of this Order.

Date: 3.23.2018 By: Wayne Printz Town Manager
Mayor/Acting Town Manager
Town of Elkton

Commonwealth of Virginia
City/County of Rockingham

The foregoing document was signed and acknowledged before me this 22nd day of March, 2018, by Mayor Wayne Printz who is Acting town Mgr. of the Town of Elkton, on behalf of the Town.

Charlotte L. Shifflett
Notary Public

167862
Registration No.

My commission expires: 2-28-2021

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

Plant Upgrades

Elkton shall upgrade the Plant to a capacity of at least 0.8 MGD, in accordance with the following schedule:

1. Complete design plans and specifications and submit to DEQ a Certificate to Construct ("CTC") application by **April 6, 2019**;
2. Secure necessary funding by **April 6, 2019**;
3. Acquire necessary land by **April 6, 2019**;
4. Advertise for bids for construction by **May 11, 2019**;
5. Award the contract for construction by **July 14, 2019**;
6. Begin construction by **August 13, 2019**;
7. Substantially complete construction and make application for a Certificate to Operate ("CTO") by **August 13, 2021**;
8. Complete construction, obtain a CTO, and revise the Plant's O&M Manual to fully document operation and maintenance procedures of the upgraded Plant by **September 19, 2021**.

General Requirements

9. Elkton shall submit quarterly reports to DEQ, with the first report being due **April 10, 2018**. Subsequent progress reports will be due **July 10, October 10, and January 10**, along with the Plant's DMR until cancellation of this Order. The quarterly reports shall contain:
 - a. a summary of all work completed since the previous progress report in accordance with this Order;
 - b. a projection of the work to be completed during the upcoming quarterly period in compliance with this Order; and
 - c. a statement regarding any anticipated problems in complying with this Order.
 10. No later than **14 days** following a date identified in the above schedule of compliance, Elkton shall submit to DEQ's Valley Regional Office a written notice of compliance or noncompliance with the scheduled item. In the case of noncompliance, the notice shall
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include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled item.

11. **DEQ Contact**

Unless otherwise specified in this Order, Elkton shall submit all requirements of Appendix A of this Order to:

Tamara Ambler
Enforcement Specialist Senior
VA DEQ – Valley Regional Office
P. O. Box 3000
Harrisonburg, VA 22801
(540) 574-7896 Phone; (540) 574-7878 Fax
tamara.ambler@deq.virginia.gov
